IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2157 OF 2003

M/s.Hindoostan Spinning & Weaving
Mills Ltd. & Anr. ...Petitioners.
Versus
The Central Provident fund Commissioner & Ors. ...Respondents.

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Mr. J. P. Cama with Mr.Shyam Mehta i/b. F. Rashmikant for the Petitioner.
Mr.Suresh Kumar for Respondent Nos.1 to 5.
Mr.N. M. Ganguli with Ms. K.G. Poojari for Respondent No.6 and 7.
Ms.N. D. Buch i/b. Ms. B.B. Dholkia for Respondent No.8.

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CORAM : DR. D.Y. CHANDRACHUD, J.

24th January 2005.

P.C.:

This petition was instituted on 4th August 2003 in order to challenge notices to show cause and summons that were issued under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act"). The First Petitioner has two divisions

respectively called the Crown Division and the Process House Unit which have been allotted Code No.MH/101 under the provisions of the Act and the Scheme framed thereunder. Two other divisions of the First Petitioner viz., Divisions ` A and ` B and at Unit at Karad have been allotted Code No.MH/31 and MH/114. Proceedings were initiated against the First Petitioner under section 7A of the Act and diverse orders were passed by the Provident Fund Commissioner. The details of those orders have been summarised in the following chart which is a part of the Writ Petition before the Court:

Summons			Orders		
Date	Division	Period	Date	Period	Amount Rs.
06/02/02	Crown Unit	August to December 2001	13-11-2002	July 2001 to April 2002	1,45.39,498
05/08/02	A & B Units	January 2000 to December 2001	19-2-2003	January 2000 to July 2002	92,04,179
12/02/03	Crown Unit	May to December 2002	27-3 17-4-2003	May to December 2002	1,46,94,264
19-3-2003	Crown Unit	January to February 2003	07/07/03	January 2003 to March 2003	11,85,618

Date	Division	Period	Date	Period	Amount Rs.
19-3-2003	A&B Units	September 2002 to February 2003	08/05/03	December 2002 to February 2003	6,28.326

2. The First Petitioner had moved an application on 24th December 2002 before the Assistant Provident Fund Commissioner stating that it was one of the oldest Textile Mills in Mumbai existing over a period of 120 years. In the aforesaid letter, it was recorded that due to adverse financial condition, the Company had reported a negative net-worth on 31st March 2001 and had made a reference to the BIFR under Section 15(1) of the Sick Industrial Companies' (Special Provisions) Act, 1985, which was registered on 29th August 2001. The Company recorded that the employees' contribution had been regularly forwarded to the Provident Fund Authorities and this would continue in future. However, since the payment of the employer' scontribution since July 2001 was in arrears, the Company

sought the grant of 36 equal monthly instalments for the payment of the dues. On 4th February 2003, the Regional Provident Fund Commissioner ("RPFC") informed the Company that its request for the grant of instalments would be subject to compliance of certain conditions which were particularised therein. Among those conditions was an undertaking to the effect that the current dues on account of the employees' and employer's shares would be remitted regularly; that a revolving Bank Guarantee equal to one installment would be submitted to the satisfaction of the RPFC; the Audited Balance Sheet for the last 3 years would be furnished; the contribution due in respect of outgoing/deceased members would be paid in one lump sum and that the Company would furnish an undertaking to pay such damages as may be imposed in accordance with the provisions of Section 14B of the Act. The Company responded by its letter dated 6th March 2003 to the conditions which were proposed by the RPFC. On 22nd May 2003, the RPFC informed the First Petitioner that its representation dated 6th May 2003 was under consideration. On 4th August 2003, a notice to show cause was issued to the First

Petitioner as to why proceedings be not adopted on account of the failure of the First Petitioner to transfer the past accumulation and to submit statutory returns as an unexempted establishment in accordance with the provisions of the Act and the Scheme and due to the failure to remit Provident Fund dues within time. The Company submitted its explanation on 10th August 2003 recording that upon the cancellation of its exemption under the Act with effect from 1st April 2003, all payments have been made to the RPFC from the wages of April 2003 onwards. The Company stated that in a meeting held on 2nd June 2003, the Provident Fund Commissioner allowed the Trust to withdraw an amount of Rs. 14.35 crores for the settlement of claims of 1083 workers and accordingly had granted permission to withdraw the said amount from the investments of the Trust. On 13th August 2003, the application of the First Petitioner for the grant of instalments was rejected by the RPFC citing as the reason for the rejection of the request, the failure of the Company to transfer past accumulations and to submit statutory returns for compliance as an unexempted establishment under the provisions of the Act and the

Scheme. On 14th August 2003, a notice to show cause was issued to the Directors of the Company to explain as to why warrants of arrest should not be issued. The Company then moved this Court in the proceedings under Article 226 of the Constitution.

3. When the matter came up before the Court initially on 8th August 2003, ad-interim relief was granted in terms of prayer clause (c) (ii) of the Petition as a result whereof the authorities were restrained from taking any coercive steps against the First Petitioner for the recovery of the amount due and payable under the provisions of the Act including on account of the arrears of the Provident Fund. On 12th January 2004, it was agreed before the Court that without prejudice to the rights of the parties, the First Petitioner shall transfer the amount already paid by way of instalments or otherwise by the First Petitioner and lying with the Trust to the account of the Second Respondent within a period of three weeks and that thereafter, the instalments shall be paid to the account of the Second Respondent directly. On 18th June 2004 when the matter came up before this

Court, it was stated on behalf of the Petitioners that an amount of Rs. 9.81 lakhs had been paid every month by the Company since March 2003 until June 2004 towards meeting the outstanding liability on account of the Provident Fund dues. According to the Petitioners, the actual amount which was due and payable was approximately Rs. 1.89 crores inclusive of interest, whereas according to the Provident Fund Commissioner, the correct amount due was Rs. 2.13 crores. This Court directed that in continuation of the earlier orders, an amount of Rs.16 lakhs shall be paid by the Petitioners to the Provident Fund Authorities as the instalment for the month of July 2004. This amount was accordingly paid. On 10th December 2004 when the matter came up before the Court, a further direction was issued recording that the Petitioners and the Provident Fund Commissioner had agreed to sit together so as to arrive at a final reconciliation of the exact amount that remains to be due and payable in respect of the subject matter of these proceedings inclusive of interest.

4. This exercise has been carried out and a compilation has now been placed on the record of the Court by the RPFC recording details of : (i) The amounts which were adjudicated in proceedings under Section 7A; (ii) The payments which have been made by the Company; and (iii) The amount that is now due and payable. The statement submitted by the Provident Fund Commissioner shows that all the amounts due and payable in respect of the Units bearing Code Nos. MH/31 and MH/114 have been duly paid. This includes an amount of Rs.84,12,809/- on account of Provident Fund dues and pension dues for the period January 2000 to February 2003 that was adjudicated upon by orders dated 19th February 2003 and 22nd May 2003 passed under Section 7A of the Act. In addition, the amount that is due and payable for the period January 2000 to February 2003 is said to have been paid; the amount being Rs.44,19,661/- towards the Provident Fund dues and Rs.40,04,399/- on account of pension dues. A total interest payment of Rs.24,68,448/- has also been effected. In substance, therefore, in so far as these two units are concerned, there are no outstandings on account of the principal

payment or interest under Section 7Q.

5. The statement which has been furnished by the RPFC then shows that in respect of Unit MH/101, a total amount of Rs.1,21,72,270/- was assessed as being due for the period July 2001 to March 2003 under Assessment Orders dated 31st November 2002, 17th April 2003 and 7th July 2003. The dues on account of pension were Rs.1,43,66,104/-. On due verification, it has been found that the net position is that for the period under consideration, a total amount of Rs.1,31,51,334/- is now due and payable as of 10th January 2005 under the following heads:

P.F. Contribution - July 2002 to March 2003 ... Rs.35,73,138/-.

Pension Contribution – May 2002 to March 2003 .. Rs.57,17,603/-

Interest under Section 7Q – July 2001 to March 2003...Rs.38,60,593/-

Counsel for the Petitioners states that of the aforesaid amounts, a further sum of Rs.9,94,368/- has been paid leaving a balance of Rs.1,21,56,974/-. Counsel appearing on behalf of the Petitioners has

drawn the attention of the Court to an affidavit filed on behalf of the Petitioners on 28th April 2004. Annexed to the affidavit are copies of letters addressed to the Provident Fund Commissioner on 23rd April 2004, inter alia recording the transfer of amounts from the Bank Account of the Trust to the Provident Fund authorities.

6. In view of the reconciliation which has been carried out by the authorities, it now emerges that an amount of Rs.1,31,51,334/- is in arrears. At this stage, it would be necessary to note that during the pendency of these proceedings, a substantial amount has, in fact, been paid by the Petitioners towards the outstanding dues on account of Provident Fund and related payment. As a result, as already noted, the entire dues have been paid off in so far as the Units assigned with Code Nos.MH/31 and MH/114 are concerned. The Petitioners had sought instalments of 36 months to pay their dues. During the pendency of these proceedings, the dues have been paid at the rate of Rs. 9.8 lakhs per month approximately, save and except for the month of July 2004 where as already noted earlier, a

payment of Rs.16 lakhs was directed to be made by the Court. Under Section 8E of the Act, it has been provided that notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount, and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted. The application for the grant of instalments was rejected by the Provident Fund Authorities citing as a reason, the failure to transfer the past accumulations and to submit statutory returns for compliance as an unexempted establishment. As far as the past accumulations are concerned, it has been stated before the Court that this accumulation has been duly transferred to the Provident Fund Authorities, as stated in the affidavit filed by Narendra N.Naidu on behalf of the Company in these proceedings on 28th April 2004. Counsel appearing on behalf of the Provident Fund Authorities has stated that formally it may not be possible for the Provident Fund Authorities to grant their consent to allowing the Company the facility of installments to pay the remaining dues as the authorities at the relevant point of time had rejected the

application. At this stage, I am of the view that the ends of justice would be met by passing a conditional order requiring the Company to pay all outstandings which are at present in the amount of Rs.1,21,55,974/-. The Company would be liable to pay interest under Section 7Q at the statutory rate until full payment is made. Counsel appearing on behalf of the Union has opposed the grant of time to pay the remaining amount. I am of the view that it would be unreasonable to expect that the entire amount be paid forthwith particularly having regard to the fact that the Company has been declared as a sick industrial undertaking. The BIFR, it may be noted, has framed a scheme on 1st April 2004. The scheme inter alia requires the Provident Fund Commissioner to consider the grant of 36 monthly instalments for the payment of the Provident Fund dues with interest at the rate of 12% p.a. The Company has agreed before the Court to to pay the outstanding dues with interest in accordance with the provisions of Section 7Q within such period as may be determined by the Court. The Court has been informed that the order of the BIFR was confirmed in an appeal that was filed by the Sixth and Seventh

Respondent, Unions.

7. The First Petitioner is granted time until 30th November 2005 to pay all the outstanding dues in monthly installments as indicated hereinafter. Each instalment shall not be of an amount less than Rs.12 lakhs, while the balance for the last month shall be of the balance which is then due and payable, inclusive of interest. Conditional on the First Petitioner continuing to pay the monthly instalments as directed by this Court, the Provident Fund Authorities shall not take any coercive steps or proceedings. In the event that there is any single default in the payment of instalments, it would be open to the authorities to take further steps in accordance with law.

8. It is agreed by the Counsel appearing on behalf of the Petitioners and the Sixth and Seventh Respondent-Unions that it would be open to the individual workers to recover their outstanding dues in accordance with law by moving the Provident Fund Authorities. Counsel appearing on behalf of the Petitioners has stated

before the Court that all the records pertaining to the individual employees have been handed over to the Provident Fund Authorities.

9. The Petition shall stand disposed of in thee terms. No order as to costs.

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